IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NOS.43 AND 44 OF 2006

CRIMINAL REVISION APPLICATION NO. 43 OF 2006

State,
through Police Inspector,
Panaji Town Police Station,
Panaji-Goa. ... Applicant

versus

Smt. Vijaya Ranjit Satardekar,
Wife of Shri Ranjit Satardekar,
Major, business,
residing at Flat No.D1/2,
1st Floor, Cedmar Apartments,
M. G. Road,
Panaji-Goa. 403 001. ... Respondent

Mr. C. A. Ferreira, Public Prosecutor for the Applicant.

Respondent absent. None present on behalf of the Respondent.

CRIMINAL REVISION APPLICATION NO. 44 OF 2006

State,
through Police Inspector,
Panaji Town Police Station,
Panaji-Goa. ... Applicant

versus

Shri Ranjit Satardekar,
son of Dattaram Satardekar,
major, married,
Legal Practitioner,
residing in Flat No. D1/2,
1st Floor, Cedmar Apartments,
M. G. Road,
Panaji - Goa. 403 001. ... Respondent

Mr. C. A. Ferreira, Public Prosecutor for the State.

Mr. S. G. Bhobe, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE :5TH OCTOBER, 2006.

ORAL ORDER

The State has assailed the Order dated 14-6-2006 of the learned Sessions Judge, Panaji, by which the learned Sessions Judge has set aside the Order dated 20-6-2003 summoning the respondents herein along with two others under Sections 468, 471, 420, 120-B r/w 34 I.P.C.

2. Some bare facts are required to be stated to dispose of these revisions. Inventory Proceedings bearing No.993/1940/A have been pending to partition the estate left by Andre Andrade who had four daughters and one son, one of whom was Vijaya Andrade who was married to one Raghunath Narvekar and who had subsequently obtained a divorce from her said husband Raghunath Narvekar and the latter thereafter married one Smt. Rucmini Narvekar. The said Raghunath Narvekar and Rucmini Narvekar had inherited 1/10th share in the said estate of the deceased Andre Andrade. Subsequently, the said Rucmini Narvekar filed a complaint against the respondents and two others which was investigated by Panaji Town Police Station and a charge-sheet bearing No.146/2003/B was filed in which process was issued by the learned J.M.F.C. by the said Order dated 20-6-2003 for above mentioned offences. The allegation of the said Smt. Rucmini R. Narvekar was that the respondents who were accused nos.1 and 2 in the said Criminal Case along with two others, namely Umesh Pokhare/A-3 and Antonio Fernandes/A-4 had hatched a criminal conspiracy and with fraudulent and dishonest intention had induced the said

complainant Smt. Rucmini and her said husband Raghunath Narvekar to sign some documents under a false pretext that the said documents were required to be used as an authority to represent them in the said Inventory Proceedings and the complaint alleged that the acting on the said forged document i.e. Power of Attorney, the respondents along with the other two accused got the property of the complainant transferred in the name of the respondent/A-2 Smt. Vijaya Satardekar and one Sadiq Sheikh. It also appears that the said Raghunath Narvekar/his heirs subsequently filed a Special Civil Suit bearing No.97/2001 against the respondents and others for declaration and/or cancellation of the Sale Deed dated 8-1-1991 on the ground that the same was executed by fraud, misrepresentation and undue influence.

3. The learned Counsel on behalf of the respondent Shri Ranjit Satardekar and the learned Public Prosecutor Mr. C. A. Ferreira do not dispute that it is on the same set of facts that the said Criminal Case came to be registered against the respondents as well as the said Special Civil Suit came to be filed.

4. The learned Sessions Judge instead of trying to find out whether the learned J.M.F.C. was justified in issuing process against the respondents or not, i.e after considering the charge-sheet and other documents submitted along with it, found an easy way out. The learned Sessions Judge has concluded that since a Civil Suit was filed by the said Smt. Rucmini Narvekar and others which was being contested by the respondents, the Civil Court was seized of the matter as regards the validity of the said Sale Deed. The learned Sessions Judge also held that the question whether the Sale Deed was forged or not would be decided by the Civil Court after recording the evidence and hearing the parties in accordance with law and therefore it would not be proper to prosecute the applicants and others when the matter was sub judiced and the Civil Court was seized of the disputed claims. The learned Sessions Judge also noted that such proceedings could always be filed in future in case the Civil Court holds that the Sale Deed was executed by fraud or misrepresentation or undue influence. The learned Sessions Judge therefore has discharged the accused from the said case.

5. On behalf of the State, the learned Public Prosecutor Mr. C. A. Ferreira submits that there was no prohibition in law for the Civil Suit and the Criminal Case being decided simultaneously. On behalf of the State, learned Public Prosecutor, has placed reliance on the decisions in the case of **M/s. Medchl Chemicals and Pharma Pvt. Ltd.** v. **M/s. Biological E. Ltd. and others(2000 CRI. L. J. 1487), M. Krishnan v. Vijay Singh and another**((2001) 8 SCC 645) and **Kamaladevi Agarwal** v. **State of W.B. and others**((2002) 1 SCC 555). The learned Public Prosecutor also submits that the two decisions on which reliance has been placed by the learned Sessions Judge in para 8 of the Judgment are inapplicable to the facts of the case.

6. On the other hand, the learned Counsel Mr. S. G. Bhobe on behalf of the respondent has no quarrel with the above proposition. Nevertheless, the learned Counsel Mr. Bhobe submits that the decision of the learned Sessions Judge in discharging the accused i.e. quashing the process issued against them could not be faulted in the light of various written submissions made on behalf of the respondents before the

learned Sessions Judge. However, the learned Counsel Mr. Bhobe concedes that the submissions made have not been considered by the learned Sessions Judge and are not reflected anywhere in the Judgment of the learned Sessions Judge.

7. The respondents/A-1 and A-2 having contested the Order issuing process against them by the learned J.M.F.C. before the Court of Sessions it was incumbent upon the learned Sessions Judge to have found out whether there was prima facie material against the respondents justifying their summoning for the offences alleged against them. One does not know when the Civil Court will decide the validity of the Sale Deed and what will happen to the Criminal Case once the accused are discharged in the manner sought to be done by the learned Sessions Judge. The learned Sessions Judge has not even cared to find out as to how the accused, if discharged today, could be prosecuted tomorrow as and when the civil suit would be decided and by whom they would be prosecuted. The approach has been absurd.

8. The Apex Court in the first decision cited by the learned Public Prosecutor has observed that:-

"We however, hasten to add that whether or not the allegations in the complaint are otherwise correct has to be decided on the basis of the evidence to be led at the trial in the complaint case but simply because of the fact that there is a remedy provided for breach of contract, that does not by itself clothe the Court to come to a conclusion that civil remedy is the only remedy available to the appellant herein. Both criminal law and civil law remedy can be pursued in diverse situations. As a matter of fact "they are not mutually exclusive but clearly co-extensive and essentially differ in their content and consequence. The object of criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect civil remedies at all for suing the wrongdoer in cases like arson, accidents etc. It is anathema to suppose that when a civil remedy is available, a criminal prosecution is

completely barred. The two types of actions are quite different in content, scope and import".

9. In the second case cited by the learned Public Prosecutor, the Apex Court referred to the observations of the High Court that as the nature of the dispute was primarily of a civil nature, the appellant was not justified in resorting to the criminal proceedings and held that accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. In that case there were allegations regarding the forging of the documents and acquiring gains on the basis of such forged documents and the Apex Court held that the proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. The Apex Court proceeded further to observe that in a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents would be entitled to discharge or acquittal but not

otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in a criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of.

10. In the third case cited by the learned Public Prosecutor, the Apex Court again has stated that the nature and scope of civil and criminal proceedings and the standard of proof required in both matters is different and distinct. Whereas in civil proceedings the matter can be decided on the basis of probabilities, the criminal case has to be decided by adopting the

standard of proof beyond reasonable doubt. The Court referred to the decision of the Constitution Bench in **M. S. Sheriff** v. **State of Madras** (AIR 1954 SC 397) wherein the Constitution Bench had, inter alia, observed thus:-

> "15. As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of enbarrassment".

> "16. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the

> crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust".

11. As already observed, the learned Sessions Judge has discharged the accused on the specious plea that criminal proceedings could be filed against them after the civil court decides the issue of the execution of the Sale Deed in the said Civil Suit. All that the learned Sessions Judge was required to find out in the revisions filed by the respondents is that whether the learned J.M.F.C. was justified in issuing process against them under the said penal sections which the learned Sessions Judge has failed to do. The learned Counsel on behalf of the respondent Shri Satardekar as well as the Public Prosecutor submit that the matter requires to be reconsidered by the learned Sessions Judge, in the light of various submissions made before the learned Sessions Judge that no case was made out to

issue process against the respondents/accused in the facts of the case.

12. The trial of a criminal case cannot be stayed only for the reason that a Civil Suit involving identical issue is pending between the parties. Civil Suits take years to be decided and some times even decades, first in the trial Court and thereafter in the appellate Courts. Criminal justice demands that offenders are brought to book early and tried in accordance with law and again at the earliest. It would be inexpedient that the trial of criminal cases should wait for such a long time. Such long delays will neither be in public interest nor in the interest of the accused. In case the accused have really committed the offences they are required to be tried and punished. In case they have not committed the offence alleged, the slur on their names should be cleared and in both the situations, the earlier, the better. In case the trial of the criminal case is postponed till a decision in the Civil Suit, it will bring discredibility to the criminal justice system, punishment to the guilty and acquittal of the innocent are both important objects of the criminal justice

system and they should be achieved within the shortest possible time.

13. In view of the above, the common Order dated 14-6- 2006 of the learned Sessions Judge is hereby set aside. The revision petitions filed by the State are allowed. Consequently, the learned Sessions Judge is hereby directed to consider the submissions made on behalf of the respondents and find out whether the learned J.M.F.C. was at all justified in issuing process for the offences alleged after examining the charge-sheet and the material produced along with it. This exercise be completed within a period of four months, in accordance with law. The respondents/accused to appear before the learned Sessions Judge on 19-10-2006 at 10.00 a.m.

N. A. BRITTO, J.

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